[Sri P. Kakkan] [5th February 1963

Expeditious arrangements are being made by the Director of Agriculture, Madras, to make locally large number of Thanjavur bow-traps for large scale distribution to ryots and every effort is being made to reduce the damage, by mobilising the volunteer force in the villages and organising a campaign for eradication of the rats.

SRI J. MATHA GOWDER : Sir, on a point of information . . . . . .

MR. SPEAKER : No question can be asked at this stage.

SRI J. MATHA GOWDER : On a point of information from the Chair.

நானும், நண்பர் திரு. கார்ச்சா கவுடர் அவர்களும் விதி 41-ன் கீழ் விவரத்தை ரெவினியூ அமைச்சர் அவர்களிடத்திலிருந்து கேட்டோம். சட்ட மன்றத்திற்கு இன்று கடைசி நாளாதலால் அது என்னவாயிற்று என்று அறிய விரும்புகிறேன்.

MR. SPEAKER : The Hon. Minister may not be ready. It will be investigated.

### III.—PRIVILEGE MATTER *re* THE ARREST OF A MEMBER.

MR. SPEAKER : I have received two letters from the hon. Member, Sri M. Kalayanasundaram, M.L.A., now detained in the Central Jail, Cuddalore. He has raised two points of privilege. I am bringing them to the notice of the House.

He has stated that the action of the Commissioner of Police in arresting him and detaining him under Section 151 of the Criminal Procedure Code and of the Deputy Secretary, Public Department, for issuing an order under Rule 30 of the Defence of India Rules for detaining him in the Central Jail, Cuddalore, and that of the Superintendent, Central Jail, Cuddalore, in detaining him there amount to a breach of privilege.

The facts of the case are as follows :—

The hon. Member was arrested on 21st November, 1962, under section 151 of the Criminal Procedure Code under orders issued by the Commissioner of Police and he was remanded to custody in the Central Jail, Madras. Again on 24th November, 1962, the member was served with an order under Rule 30 of the Defence of India Rules by the Deputy Secretary, Public Department. and he was transferred to Central Jail, Cuddalore, where he is still lodged.

The contention of the member is that the Madras Legislative Assembly passed a resolution on 29th October, 1962, regarding the Chinese Aggression and pledged its support to any measure that may be taken up to drive out the Chinese and that he is also a party to the resolution and has taken the pledge to support the Government and that in view of that to arrst him and detain him would amount to a breach of privilege.

5th February 1963] [Mr. Speaker]

Articles 194 (1) and (2) specify certain privileges of Members. Article 194 (3) states that the other privileges could be defined by the Legislature and till they are defined they should be the same as those of the House of Commons of United Kingdom on the date of the commencement of the Constitution. The Madras Legislature has not yet defined the other privileges. So the other privileges will be the same as those of the Home of Commons of United Kingdom on the 26th January 1950. The privilege of the members of the House of Commons in respect of arrest and detention is limited to civil cases only. The freedom is not allowed to interfere with the administration of criminal justice or emergency legislation.

In civil cases a member cannot be arrested during the continuance of the session and 40 days before the commencement of the session and 40 days after the prorogation or dissolution.

The only privilege that can be claimed in the case of arrests is the right of receiving immediate information of the imprisonment or detention of any member with the reasons for which he is detained.

The hon. Member, Sri M. Kalyanasundaram has not been arrested under civil process. When he was first arrested, it was under Section 151 of the Criminal Procedure Code and subsequently under the Defence of India Rules. It has been held on a previous occasion that arrest under Section 151 Criminal Procedure Code does not amount to a breach of privilege. Further the Commissioner of Police has communicated the fact of arrest and detention on 21st January 1962 with reference to Rule 245 of the Assembly Rules and the Members of the Assembly have been informed about the arrest and detention and the reasons for the same. Subsequently the member has been served with another order under Rule 30 of the Defence of India Rules by the Deputy Secretary, Public Department, and the member has accordingly been transferred to the Cuddalore Central Jail. According to Rule 245 of the Assembly Rules, intimation of this was also received and communicated to the Members. Further, his arrest and detention is in no way related to his speech made in the Assembly on the 29th October 1962. Arrest and detention under Emergency provisions cannot be said to be a matter coming under the privilege of members. In England, it is not a matter of privilege and therefore in India also it cannot be a matter of privilege in view of the specific provision in the Constitution—Article 194 (3). Further Article 21 of the Constitution states that no person shall be deprived of his life or personal liberty except according to law. Article 22 states certain exceptions to Article 21. But the Defence of India Act, 1962, (Act 51 of 1962) has suspended the operation of Articles 21 and 22. The Government have therefore power to detain anybody who comes under the purview of Rule 30 of the Defence of India Rules. Privilege cannot be invoked in such cases. Though it is a restraint on the freedom of the citizens the State has imposed such restraint for the safety of the State.

[Mr. Speaker] [5th February 1963

The principle laid down by the House of Commons in 1641 in such a matter is apt and it states that ' Privilege of Parliament is granted in regard to the Service of the Commonwealth and is not to be used to the danger of the Commonwealth '. Similarly, the restrictions imposed under the Defence of India Act for the safety of India.

The other point stated by the member is that he has taken a pledge in the House on 29th October 1962 and to arrest and detain him in spite of that would amount to a contempt of the proceedings. On 29th October, 1962, the Assembly passed the resolution regarding chines aggresion. The Member also spoke on the resolution and the resolution was adopted unanimously. The House is not concerned with the pledges of members and their enforcement. The House cannot be expected to be watching the outside activities of the members as to whether they adhere to their statements made in the House. It is not the function of the House to watch such things. Now there is National Emergency and the rights of all citizens have been curtailed and all fundamental rights under the Constitution have been suspended, and the Members of the Legislature are no exception.

The officers mentioned by the Member have done their duties according to Law and have not committed any breach of privileges of the House or its members. I therefore hold that this does not involve a matter of privilege.

Sri K. A. MATHIALAGAN : I want a small clarification, Sir.

Mr. SPEAKER : How can the hon. Member ask a clarification on the ruling already given?

Sri K. A. MATHIALAGAN : I submit to your ruling, Sir. With great respect I submit to it. I only want to ask the Government this.

*கனம் உறுப்பினர் அவர்கள் பாதுகாப்புச் சட்டத்தின் கீழ் கைது செய்யப்பட்டிருக்கிறார்கள். அவர் எப்படி பாதுகாப்பிற்கு விரோதமாக நடந்து கொண்டிருப்பதாகக் கருதப்படுகிறது? அந்த நிலைமை இருந்தால் பாதுகாப்புக் கமிட்டியில் அவர்கள் இருக்க இடத்தை ஏன் வைத்திருக்க வேண்டும்? ஏன் அதை நிராகரிக்க ........*

Mr. SPEAKER : The question does not arise now.

I have received another notice of privilege from the same hon. Member Sri M. Kalyanasundaram. He says in his notice that he gave some letters to the Jail Superintendent to be despatched to the Speaker but that those letters were sent to Government. Government have in their turn passed on those letters to the Speaker. His claim is that he has a right to send letters direct to the Speaker and not through Government and therefore by sending the letters to Government, the Superintendent, Central Jail, Cuddalore has committed a breach of privilege of the House.

5th February 1963] [Mr. Speaker]

In my previous ruling I have already read in detail the privileges of the members of the House.

In the House of Commons the matter relating to forwarding of letters of Members under detention was raised in 1909. The Speaker of the House of Commons observed in that connection that he had no control over the prison officials and if the letter written by a member in custody reaches him he would presume the officials have passed it and in fact he had received one letter from the member who had been detained. Later in 1939, Captain Ramsay, a member of the House of Commons was detained under the Emergency Provisions. Captain Ramsay was given every facility in preparing his case and in submitting his case to the Privileges Committee. In fact he was given the widest opportunity of making his representations. The practice in England is that if a member writes a letter to the Speaker then the Jail authorities may forward such letter to the Speaker.

A similar matter was raised in Madras also. A member of the Madras Legislative Assembly (1946–52) was detained under the Preventive Detention Act and the Government withheld his letters addressed to the Speaker, etc. The matter came up before the Madras High Court. The High Court held :—

"As long as a detenu continues to be a member of a legislature, he is entitled to the right of correspondence with the legislature, and to make representations to the Speaker, and the Chairman of the Committee of Privileges, and no executive authority has any right to withhold such correspondence. This right as it appears to us, flows not merely from principles of natural justice, which will be violated by such letters being withheld, but as a continuing member of the House, he would also appear to be entitled to this privilege under Article 194 (3) of the Constitution under which English Parliamentary Practice has to be followed. We accordingly declare the right of the petitioner as a Member of the Legislative Assembly to correspond without let or hindrance with the Speaker and the Chairman of the Committee of Privileges through the Secretary of the Legislature during his period of detention."

As a sequel to this judgment, the Madras Government framed the Madras Security Prisoners' Rules, 1950. Sub-rule 4 of Rule 11 provides as follows :—

"All communications addressed by a security prisoner who is a member of the State Legislature or of Parliament, to the Speaker or Chairman of the House of which he is a member, or to the Chairman of a Committee (including a Committee of Privileges) of such Houses, or of a Joint Committee of both Houses of the State Legislature or of Parliament, as the case may be, shall be immediately forwarded by the Superintendent of the Jail to the Government so as to be dealt with by them in accordance with the rights and privileges of the prisoner as a Member of the House to which he belongs."

[Mr. Speaker] [5th February 1963

The matter was also examined by the Privileges Committee of the Lok Sabha in 1958. A member of the Lok Sabha who was in custody complained that a letter of his to another member was not forwarded. The matter was referred to the Committee of Privileges which among other things recommended as follows :—

"The Committee recommended that the Ministry of Home Affairs may be moved to arrange for incorporation of provisions on the lines of Rule 11 (4) of the Madras Security Prisoners' Rules, 1950, in the Jail Codes, Security Prisoners' Rules etc., of State Governments and Centrally administered areas in respect of all communications, addressed by a Member of Parliament, under arrest or detention or imprisonment for security or other reasons, to the Speaker of Lok Sabha or Chairman of Rajya Sabha, as the case may be, or to the Chairman of a Parliamentary Committee, or of a Joint Committee of both Houses of Parliament."

In Punjab also a similar matter was raised in 1957. The Speaker has ruled that correspondence of members to the Speaker should not be withheld.

It is thus seen that the Jail authorities cannot withhold any letter addressed to the Speaker or the Chairman of a Committee. They have to send such letters to Government to be dealt with according to the rights and privileges. In this case the Superintendent, Central Jail, has sent all letters given to him by the member, to the Secretary, Home Department, who has forwarded them to this Department. The fundamental principle is that all citizens including the members of the Legislature have to be treated equally in the eyes of law. The Security Prisoners' Rules apply to all prisoners including the members of the Legislature.

If the member wants he must take steps to amend the rules afterwards and not now. So far as the rules existing at present are concerned, there is no violation and I hold that it does not involve a matter of privilege.

SRI V. KRISHNAMOORTHY : On a point of information, Sir. I submit to the rulings of the Chair. I want to ask for information from the Chair regarding the contention of the hon. Member Sri M. Kalyanasundaram on the first privilege issue. He has stated that he . . . . . .

MR. SPEAKER : How can the hon. Member have any information from the Chair? I have already given my ruling on the first point raised by the hon. Member Sri M. Kalyanasundaram. If the hon. Member has any difficulty, he can come to my Chamber.

SRI V. KRISHNAMOORTHI rose—

MR SPEAKER : No two lawyers will agree. The hon. Member is a lawyer and I am also a lawyer and interpretations will vary (laughter).